Mailed: December 13, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Centocor, Inc.
v.
Celltech Therapeutics Limited

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Opposition No. 91125166
to Application No. 76033946
filed on April 25, 2000

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Norm D. St. Landau, Brian A. Coleman and Christen M. English of Drinker Biddle & Reath for Centocor, Inc.

B. Parker Livingston, Jr. of Burns, Doane, Swecker & Mathis for Celltech Therapeutics Limited.

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Before Walters, Rogers and Drost, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Centocor, Inc. filed its opposition to the application of Celltech Therapeutics Limited to register the mark HUMICADE for “anti-tumor necrosis antibodies for the

treatment of Crohn's disease and rheumatoid arthritis," in International Class 5.[1]

As grounds for opposition, opposer asserts that applicant's mark, when applied to applicant's goods so resembles opposer's previously used and registered mark REMICADE for "pharmaceutical compositions for treatment of autoimmune diseases and disorders"[2] as to be likely to cause confusion, under Section 2(d) of the Trademark Act.

Applicant, in its answer, denied the salient allegations of the claim.

The Record

The record consists of the pleadings; the file of the involved application; a certified status and title copy of Registration No. 2336754[3]; opposer's first request for admissions to applicant,[4] made of record by opposer's notice

[1] Application Serial No. 76033946, filed April 25, 2000, based upon an allegation of a bona fide intention to use the mark in commerce in connection with the identified goods. The application includes the statement that "the mark has no meaning or significance in the trade, no geographical significance, nor any meaning in a foreign language."

[2] Registration No. 2336754, issued March 28, 2000, in International Class 5.

[3] Opposer also submitted by notice of reliance a certified status and title copy of its Application Serial No.76390060, filed March 29, 2002. However, opposer did not amend its pleading to assert this application, nor do we conclude that the pleading is amended by the express or implied consent of the parties. Further, an application is of little probative value as it is evidence only of its filing.

[4] The declaration by opposer's counsel (attesting to applicant's failure to respond to opposer's request for admissions) and attached exhibit are not appropriate for submission by notice of reliance. We have not considered this evidence, nor is it necessary to do so. The fact that applicant did not oppose opposer's submission of the unanswered request for admissions at trial can only be construed as its agreement that no

of reliance; and the testimony deposition by opposer of Frank Closurdo, opposer's director of immunology marketing, with accompanying exhibits.[5] Applicant filed no evidence and was not present at the deposition of Mr. Closurdo. Only opposer filed a brief on the case and an oral hearing was not requested.

Factual Findings

Opposer, a division of Johnson & Johnson, manufactures a drug, Infliximab (generic name), that it markets under the registered trademark REMICADE. REMICADE brand Infliximab is a biologic therapy used to treat the symptoms of Crohn's disease and rheumatoid arthritis. Both of these diseases are autoimmune diseases, which Mr. Closurdo described as conditions in which the body overproduces a molecule called TNF, or tumor necrosis factor, which causes inflammation as it attacks the gastrointestinal track in Crohn's disease and the joints, particularly those of the hands, feet and knees, in rheumatoid arthritis.

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response was filed to this discovery request. As such, we deem the statements therein to have been admitted by applicant.

[5] Opposer submitted an unsigned confidentiality agreement and represented that it was consented to by applicant. Applicant did not contest its alleged consent and we therefore recognize this agreement as a protective order in this case. However, opposer submitted its entire deposition of Mr. Closurdo with accompanying exhibits under seal, rather than redacting and separately submitting under seal only those portions requiring confidentiality. Opposer is advised that it must submit, within thirty days of this decision, a redacted copy of the deposition with exhibits and, under separate cover, only those portions reasonably considered confidential. See Trademark Rules 2.27(e) and 2.125(e), 37 CFR §§2.27(e) and 2.125(e). If none is filed, then the entire deposition and exhibits will become part of the public record.

Infliximab, marketed as REMICADE, was approved by the U.S. Food and Drug Administration on August 24, 1998, and sales of the drug, through physicians, began in September 1998. It is delivered to patients via intravenous infusion. The following design trademark has also been used in connection with this medication, since March 2002:

Due to the fact that opposer has marked as confidential its entire deposition of Mr. Closurdo, its only witness, we will be circumspect in discussing opposer's business. Suffice it to say that opposer has several competitors in the treatment of Crohn's disease and rheumatoid arthritis; that opposer's sales of REMICADE brand Infliximab in the United States have grown substantially up to the time of trial; that opposer has significant marketing programs directed to the medical profession, principally rheumatologists and gastroenterologists, and directly to consumers, targeting persons with either Crohn's disease or rheumatoid arthritis; and that there are presently no other products in this field that end with "M-I-C-A-D-E."

Opposer's confidential evidence of sales, promotional expenses, marketing scope and market research leads us to the conclusion that, in the relevant market of doctors and

patients suffering from Chron's disease or rheumatoid arthritis, the REMICADE mark has become famous.

Based on the statements deemed admitted in opposer's unanswered first request for admissions to applicant, the following additional facts are relevant:

- Pharmaceutical compositions which are sometimes used to treat or control Crohn's disease and rheumatoid arthritis include anti-tumor necrosis antibodies as well as monoclonal antibodies;
- Opposer's REMICADE brand Infliximab is a monoclonal antibody;
- The mark HUMICADE is substantially similar in appearance, sound and commercial impression to REMICADE;
- The goods offered by the parties under their respective marks are likely to travel in the same channels of trade to the same target market.

Analysis

Inasmuch as a certified copy of opposer's registration is of record, there is no issue with respect to opposer's priority. *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our determination of likelihood of confusion under Section 2(d) must be based on an analysis of all of the probative facts in evidence that are relevant to the factors

bearing on the likelihood of confusion issue. *In re E.I. du Pont de Nemours & Co.,* 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). *See also In re Azteca Restaurant Enterprises, Inc.,* 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

With respect to the goods of the parties, we observe that opposer's goods are broadly identified in its registration and encompass the goods identified in the application. It is clear from the evidence establishing the exact nature of opposer's goods, as well as applicant's admissions, that the parties' goods are substantially similar because both opposer's goods and applicant's identified goods are biologic therapies used to treat the symptoms of Crohn's disease and rheumatoid arthritis; and that the channels of trade and prospective customers are the same.

Turning to the marks, it is well-established that when marks would appear on substantially similar goods or

services, the degree of similarity necessary to support a conclusion of likely confusion declines. *Century 21 Real Estate Corp. v. Century Life of America,* 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992). While we must base our determination on a comparison of the marks in their entireties, we are guided, equally, by the well established principle that, in articulating reasons for reaching a conclusion on the issue of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties." *In re National Data Corp.,* 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

Applicant is deemed to have admitted that the parties' marks are substantially similar in appearance, sound and commercial impression. We agree that the only difference in sound and appearance between the two marks, REMICADE and HUMICADE is the first two letters of each mark. The remaining portion of each mark is identical and, as a result, the marks sound similar and rhyme. We also conclude that, because there is no evidence to the contrary, the connotation of each mark is arbitrary in connection with the involved goods. Further, we note that we have found opposer's mark to be famous in the relevant market and, thus, it is entitled to a broad scope of protection.

In view of the fame of opposer's mark, the fact that neither mark has a particular connotation that distinguishes it from the other mark, and in view of the similarity in sound and appearance, we find that the commercial impressions of the two marks are sufficiently similar that, if used in connection with substantially similar goods, confusion as to source is likely.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of opposer's mark, REMICADE, and applicant's mark, HUMICADE, their contemporaneous use on the substantially similar goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

Decision: The opposition is sustained.